

E. Whether or Not a Minimum Voices Test is Met, Waivers Should Be Available to Prevent a Failing Station/Newspaper from Going out of Business.

Most of the commenters who addressed the issue agreed that the Commission should have the discretion to grant waivers in cases where it is necessary to save a "failing voice." "Indeed, the public will benefit more from a newspaper or station that can continue to compete by virtue of common ownership than it will from the loss of an independent voice."⁵⁶ Even some of those commenters opposed to other forms of relaxation supported waivers for failing stations. One party, however, would require "an independent study" to verify the market value of the property and that the waiver applicant is the only available buyer.⁵⁷

Requiring that a waiver applicant substantiate a failing station claim with an independent study, however, is unrealistic at best. Imposition of such a requirement would inevitably delay the FCC approval process and, in many cases, postpone the necessary relief until the station or newspaper in question was irretrievably lost. Accordingly, NAA submits that the Commission should make waivers available when the applicant makes a credible showing that the transaction will prevent [the] loss of an independent outlet.

F. Waivers Should Also Be Available for Previously Co-Owned Stations and Where Specific Public Interest Benefits Can Be Achieved Through Combination.

In its initial comments, NAA supported the grant of waivers to allow a former owner to reacquire a previously-owned facility, or to permit the sale of a grandfathered combination

⁵⁶ Cox Comments at 21.

⁵⁷ See BCFM Comments at 33-34.

to a single buyer. In neither case would there be a significant alteration in the pre-existing level of diversity in the market.

Moreover, as several other commenters point out, the experience of “grandfathered markets demonstrate that radio/daily newspaper combinations have not produced the threats envisioned by the Commission in 1975.”⁵⁸ For example, the National Newspaper Association described the experience of one publisher competing against two grandfathered combinations in the Dallas/Fort Worth area, who conceded that there is “a great deal of diversity both in news coverage and in advertising competition.”⁵⁹ Moreover, that publisher does not believe that “lifting the cross-ownership restriction would have any impact on the ‘diversity of voices, opinion, culture, [and] news stories.’”⁶⁰ Similarly, the publisher of a twice weekly newspaper competing against a grandfathered combination in the Baton Rouge, Louisiana market believes that “[l]ifting the restriction at this time would not harm economic competition.”⁶¹

These comments and those of other parties strongly support NAA’s position that the Commission should grant waivers to permit the transfer or reacquisition of previously co-owned combinations. “[S]uch waivers would perpetuate existing or restore prior diversity and, as such, would not harm the prohibition’s goals.”⁶² The breakup or enforced separation of

⁵⁸ Comments of National Newspaper Association at 4.

⁵⁹ Id. at 5.

⁶⁰ Id.

⁶¹ Id. at 6.

⁶² Cox Comments at 21.

such combinations is not necessary to ensure diversity or competition, and unfairly handicaps the affected parties.

In addition, as noted previously, some parties have suggested that to justify a waiver, an applicant should grant waivers to be required to demonstrate specific additional public interest benefits. NAA reiterates its earlier opposition to requiring any additional public interest undertaking by an applicant who meets the "minimum voices" test or other objective criteria that the Commission ultimately adopts for presumptive waivers. No such requirement is imposed under the Commission's presumptive waiver policy as currently applied to local television/radio combinations. In fact, the Commission expressly rejected the need for such a requirement in any market where the objective standards for waiver are met.⁶³ On the other hand, as stated in its initial comments, NAA supports the Commission's consideration, under an appropriate case-by-case standard, of waiver requests by applicants who do not meet the objective criteria but can otherwise demonstrate that the proposed combination would serve the public interest.

IV. CONCLUSION

The Commission is correct in recognizing that its approach to newspaper/radio cross-ownership waivers must be updated in light of today's highly diversified and technologically advanced media marketplace. NAA agrees, moreover, with the substantial number of commenters who urge the Commission to take this opportunity to give newspaper publishers and broadcasters the ability to compete fully in today's multimedia marketplace by eliminating

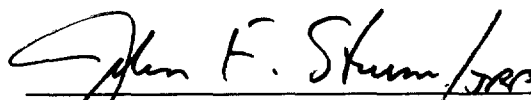
⁶³ See NAA Comments at 52-53.

altogether the anachronistic newspaper/broadcast cross-ownership ban. As NAA explained in detail in its opening comments, these restrictions were adopted in 1975 with no record evidence that newspaper cross-owners engaged in anti-competitive practices. Moreover, today's newspaper publishers and broadcasters face intense competition from an ever-expanding array of information providers. Accordingly, the Commission should promptly initiate a proceeding to repeal the unnecessary and discriminatory newspaper/broadcast ban.

In the interim, NAA joins the many commenting parties who encouraged the FCC to adopt a strong, presumptive waiver policy. Waivers should be granted based on the existence of a sufficient number of competing voices, irrespective of market rank, and taking into account the full variety of competing alternative voices available in today's media market. Moreover, even in circumstances where the applicant has failed to meet the objective test for "presumptive" waivers, the Commission should make clear that it will consider granting waivers on a case-by-case basis to applicants who can demonstrate that a proposed combination would be in the public interest. The adoption of such a waiver policy will serve as an important "first step" toward elimination of the anachronistic restriction on the

ability of newspaper publishers and broadcasters to compete fully and effectively in today's technologically advanced and highly diverse media market.

Respectfully submitted,



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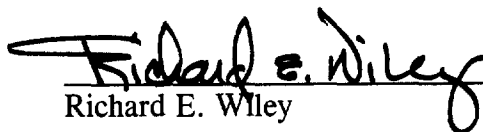
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